

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 804

Introduced by Assembly Member La Suer

February 18, 2005

An act to add Section 21431 to the Government Code, to amend ~~Section 4658.6~~ *Sections 3762 and 4658.6* of the Labor Code, and to amend Section 1543 of the Penal Code, relating to the California Highway Patrol.

LEGISLATIVE COUNSEL'S DIGEST

AB 804, as amended, La Suer. The California Highway Patrol: disability and workers' compensation.

(1) The Public Employees' Retirement Law provides for the retirement of any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability, regardless of age or amount of service.

This bill would require ~~the reduction of that~~ a retired patrol member's monthly disability retirement allowance ~~attributable to an industrial disability~~ *be converted to a service retirement pension*, if that member subsequently engages in gainful occupation as a peace officer, as specified. *The bill would permit an industrial disability retirement pension to be suspended if the recipient fails to provide requested employment information.* ~~Those~~ These provisions would apply only to persons who retire on or after January 1, 2006.

(2) *Existing law requires a workers' compensation insurer to discuss with an employer all elements in a claim file that affect the employer's premium, with specified exceptions, including medical information, as defined. While generally prohibiting the disclosure of*

medical information, certain types of medical information would be disclosable, including that related to an injury for which workers' compensation is claimed, as specified.

This bill would permit the disclosure of medical information to the Department of the California Highway Patrol for purposes of investigating workers' compensation insurance fraud, subject to specified limitations.

(2)

(3) Existing law provides for the payment of temporary disability indemnity payments and supplemental job displacement benefits to any injured employee under specified circumstances. Existing law exempts an employer from the payment of those displacement benefits, if certain conditions are satisfied.

This bill would further exempt an employer from making those payments if the injured employee is a peace officer employed by the Department of the California Highway Patrol and eligible for a maximum service retirement benefit, as specified.

(3)

(4) Existing law provides that records of the identity, diagnosis, prognosis, or treatment of any patient maintained by a health care facility that are not privileged records required to be secured by a certain special master procedure, or records required by law to be confidential, shall only be disclosed to law enforcement agencies under specified circumstances. Existing law provides that those provisions shall not apply to various types of investigations, including investigations of insurance fraud performed by the Department of Insurance or the California Highway Patrol.

This bill would add investigations of workers' compensation insurance fraud performed by the California Highway Patrol and conducted by peace officers in that department, to the investigations exempted from the provisions regarding the disclosure of records, *subject to specified limitations.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21431 is added to the Government
2 Code, to read:

1 21431. (a) If, after becoming eligible for the maximum
2 service retirement benefit *allowable* under Section 21362,
3 21362.2, or 21362.3, a patrol member retires due to an industrial
4 disability and subsequently engages in a gainful occupation as a
5 peace officer, but not in state service, the board shall ~~reduce that~~
6 ~~portion of his or her monthly disability retirement pension that is~~
7 ~~attributable to the industrial disability retirement by the amount~~
8 ~~equal to the salary earned at the current occupation~~ *convert the*
9 *retired patrol member's industrial disability retirement pension*
10 *to a service retirement pension.*

11 (b) The recipient of ~~a~~ *an industrial* disability allowance shall
12 furnish ~~earnings~~ *employment* information as requested by the
13 board to administer this section. If the recipient fails to furnish
14 the requested information, the disability retirement pension shall
15 be ~~discontinued~~ *suspended* until the requested information is
16 furnished. ~~If the requested information is furnished, the industrial~~
17 ~~disability retirement pension shall be reinstated.~~

18 *SEC. 2 Section 3762 of the Labor Code is amended to read:*

19 3762. (a) Except as provided in subdivisions (b) and (c), the
20 insurer shall discuss all elements of the claim file that affect the
21 employer's premium with the employer, and shall supply copies
22 of the documents that affect the premium at the employer's
23 expense during reasonable business hours.

24 (b) The right provided by this section shall not extend to any
25 document that the insurer is prohibited from disclosing to the
26 employer under the attorney-client privilege, any other applicable
27 privilege, or statutory prohibition upon disclosure, or under
28 Section 1877.4 of the Insurance Code.

29 (c) An insurer, third-party administrator retained by a
30 self-insured employer pursuant to Section 3702.1 to administer
31 the employer's workers' compensation claims, and those
32 employees and agents specified by a self-insured employer to
33 administer the employer's workers' compensation claims, are
34 prohibited from disclosing or causing to be disclosed to an
35 employer, any medical information, as defined in subdivision (b)
36 of Section 56.05 of the Civil Code, about an employee who has
37 filed a workers' compensation claim, except as follows:

38 (1) Medical information limited to the diagnosis of the mental
39 or physical condition for which workers' compensation is
40 claimed and the treatment provided for this condition.

(2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

(3) Medical information requested by the Department of the California Highway Patrol for the purposes of investigating workers' compensation insurance fraud, subject to the limitations of Section 1877.3 of the Insurance Code.

(c) This section shall apply only to persons who retire on or after January 1, 2006.

~~SEC. 2.~~

SEC. 3. Section 4658.6 of the Labor Code is amended to read:

4658.6. The employer shall not be liable for the supplemental job displacement benefit if the employer meets any of the following conditions:

(a) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

(b) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, alternative work meeting all of the following conditions:

(1) The employee has the ability to perform the essential functions of the job provided.

(2) The job provided is in a regular position lasting at least 12 months.

(3) The job provided offers wages and compensation that are within 15 percent of those paid to the employee at the time of injury.

(4) The job is located within reasonable commuting distance of the employee's residence at the time of injury.

(c) The employee is a peace officer as defined by subdivision (a) of Section 830.2 of the Penal Code and is eligible for the maximum service retirement benefit under Section 21362, 21362.2, or 21362.3 of the Government Code.

1 ~~SEC. 3.~~

2 *SEC. 4.* Section 1543 of the Penal Code is amended to read:

3 1543. (a) Records of the identity, diagnosis, prognosis, or
4 treatment of any patient maintained by a health care facility that
5 are not privileged records required to be secured by the special
6 master procedure in Section 1524, or records required by law to
7 be confidential, shall only be disclosed to law enforcement
8 agencies pursuant to this section:

9 (1) In accordance with the prior written consent of the patient;
10 or

11 (2) If authorized by an appropriate order of a court of
12 competent jurisdiction in the county where the records are
13 located, granted after application showing good cause therefor. In
14 assessing good cause, the court:

15 (A) Shall weigh the public interest and the need for disclosure
16 against the injury to the patient, to the physician-patient
17 relationship, and to the treatment services;

18 (B) Shall determine that there is a reasonable likelihood that
19 the records in question will disclose material information or
20 evidence of substantial value in connection with the investigation
21 or prosecution; or

22 (3) By a search warrant obtained pursuant to Section 1524.

23 (b) The prohibitions of this section continue to apply to
24 records concerning any individual who has been a patient,
25 irrespective of whether or when he or she ceases to be a patient.

26 (c) Except where an extraordinary order under Section 1544 is
27 granted or a search warrant is obtained pursuant to Section 1524,
28 any health care facility whose records are sought under this
29 chapter shall be notified of the application and afforded an
30 opportunity to appear and be heard thereon.

31 (d) Both disclosure and dissemination of any information from
32 the records shall be limited under the terms of the order to assure
33 that no information will be unnecessarily disclosed and that
34 dissemination will be no wider than necessary.

35 ~~This~~

36 (e) *This chapter shall not apply to investigations the following:*

37 (1) *Investigations* of fraud in the provision or receipt of
38 Medi-Cal benefits, investigations of insurance fraud performed
39 by the Department of Insurance or the California Highway
40 Patrol, ~~investigations.~~

1 (2) *Investigations* of workers' compensation insurance fraud
2 performed by the Department of Corrections and conducted by
3 peace officers specified in paragraph (2) of subdivision (d) of
4 Section 830.2, ~~investigations.~~

5 (3) *Investigations* of workers' compensation insurance fraud
6 performed by the California Highway Patrol and conducted by
7 peace officers specified in subdivision (a) of Section 830.2, ~~and~~
8 ~~investigations~~ *subject to the limitations of Section 1877.3 of the*
9 *Insurance Code.*

10 (4) *Investigations* and research regarding occupational health
11 and safety performed by or under agreement with the Department
12 of Industrial Relations. Access to medical records in these
13 investigations shall be governed by all laws in effect at the time
14 access is sought.

15 ~~(e)~~

16 (f) Nothing in this chapter shall prohibit disclosure by a
17 medical facility or medical provider of information contained in
18 medical records where disclosure to specific agencies is
19 mandated by statutes or regulations.

20 ~~(f)~~

21 (g) This chapter shall not be construed to authorize disclosure
22 of privileged records to law enforcement agencies by the
23 procedure set forth in this chapter, where the privileged records
24 are required to be secured by the special master procedure set
25 forth in subdivision (c) of Section 1524 or required by law to be
26 confidential.